UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 12-md-2323(AB) MDL No. 2323

RESPONSE AND DECLARATION OF ROBERT A. STEIN TO
PROFESSOR WILLIAM B. RUBENSTEIN'S EXPERT REPORT

1. Pursuant to the Court's December 11, 2017 Order of Court, Robert A. Stein hereby responds to the Expert Report of Professor William B. Rubenstein, filed on December 11, 2017.

2. I represent a number of former NFL players who are settlement class members in this case.

3. Professor Rubenstein's thoughtful analysis regarding class member attorney fees produced opinions as to (a) a presumptive cap on all contingent fee contracts, and (b) the Class Counsel proposed 5% set-aside of class members' recoveries. I agree with his recommendation as to the latter, and wish to briefly explain a major fault in the underlying actuarial projection of $950 million for the amount to ultimately be distributed through the Monetary Award Fund ("MAF") which he relied upon in the former. This actuarial omission could dramatically affect Professor Rubenstein's opinion and the Court's intent for the settlement itself.

4. **The "Billion Dollar Settlement" payment to the class is largely speculative.** Public comments by Class Counsel and NFL representatives treat the projections of actuaries hired by them as similar to typical class action settlements wherein fixed, actual amounts are agreed to be paid by Defendants to damaged class members. In this litigation class members only receive monetary awards based upon their receiving Qualifying Diagnoses from settlement-approved physicians once the settlement received final approval. The $950 million projection

appears to have been based upon actuarial assumptions which did not consider a significant and likely event – the final approval and medical use of a test for CTE in living persons, namely the retired NFL players constituting the settlement class.

5. Class Counsel's requested fees, if approved, appear to be the only amounts certain to be paid in this settlement, as no minimum payment to class members is fixed by settlement terms. The total amount paid to brain-damaged retired players solely rests on their navigating multiple settlement hurdles. The greatest of these hurdles is CTE.

6. **CTE**, or Chronic Traumatic Encephalopathy, was the centerpiece of initial concussion injury litigation, yet the eventual settlement eliminated it as a Qualifying Diagnosis for payment, and worse, the settlement required the specific release of all CTE claims by class members, other than a short window for recovery by a small number of players who died with CTE prior to final settlement approval.

a. In the short time since final settlement approval, evidence has mounted that CTE is the overwhelming cause of horrific symptoms in brain damaged ex-players. The Court is well aware of the recent Boston University study confirming CTE in 110 of 111 deceased, symptomatic ex-players, despite many having been diagnosed and treated for other, similar diseases before death.

b. Development of tests for CTE in living persons continues rapidly at medical centers including UCLA, where multiple symptomatic ex-NFL players have received preliminary CTE diagnosis.

c. The actuarial estimate of $950 million eventual settlement payments did not consider a likely, logical event – the diagnosis of (settlement released) CTE in damaged class members which effectively precludes their qualifying for any settlement award. Consequently, Professor Rubenstein could not consider the resulting diminution in eventual settlement payments. The reasonable scenario being that once a living person CTE test receives final medical (i.e. FDA) approval, settlement-approved BAP and MAF physicians (the only ones now able to provide Qualifying Diagnoses to justify monetary awards) will, as medically appropriate, administer that test to damaged class members. Every class member testing positively for CTE, like the 110 of 111 tested posthumously at Boston University, will then become ineligible for any settlement award due to the settlement's release of all CTE claims, and of CTE's exclusion as a Qualifying Diagnosis after final settlement approval. Physicians identifying CTE by a medically accepted test would not reasonably continue testing for other conditions, as diagnosis would be medically complete. This could effectively eliminate virtually all settlement awards immediately. This occurrence would cause the "Billion Dollar Settlement" to become far smaller, inconsequential for damaged retired NFL players from that point, and the likelihood may dramatically change the award totals relied upon by Professor Rubenstein for his opinion.

7. I addressed the likelihood of this result and its impact upon my class member clients to both Special Masters in the attached July 20, 2017 communication, requesting their response to help advise class members and retired NFL player clients who had at that time opted out. To the date of this filing I have received no response. A true and correct copy of my July 20, 2017 communication is attached here as Exhibit A.

8. This potential "back door" permitting NFL avoidance of payment to legitimately damaged ex-players is relevant to the consideration of appropriate fixed fees to Class Counsel,

and to potential ranges of contingent fees to individual attorneys upon actual awards to their clients.

Dated: January 3, 2018

Respectfully submitted,

By: *_/s/ Robert A. Stein_*
BOB STEIN LLC
2313 Cedar Shore Drive
Minneapolis, MN 55416
Tel: (612) 886-3582
Email: rastein66@aol.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on January 3, 2018, a true and correct copy of the foregoing was filed electronically by CM/ECF, which caused notice to be sent to all counsel of record.

By: */s/ Robert A. Stein*